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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1060th MEETING

Held at Headquarters, New York,
on Wednesday, 10 April 1991, at 3 p.m.

Chairman: Mr. POCAR

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1060/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Sri Lanka (continued) (CCPR/C/42/Add.9)

1. At the invitation of the Chairman, Mr. de Silva (Sri Lanka) took a place at the Committee table.

2. The CHAIRMAN said that the Committee would continue its general observations on the second periodic report of Sri Lanka.

3. Ms. CHANET said that the second periodic report of Sri Lanka had not been prepared in accordance with the Committee's guidelines and did not contain the information requested by the Committee. Mr. de Silva did not seem to be entirely in agreement with the information supplied by Amnesty International. However, much of that information had been corroborated by reliable sources. A State governed by rule of law should have the necessary means to control, prevent and punish such offences within the scope of its domestic legislation and with due respect for its international commitments.

4. She associated herself with the comments made by other members of the Committee regarding the seventeenth amendment to the Constitution. The Government should not confuse a derogation from certain rights with restrictions on those rights. Article 4 of the Convention set forth the exceptional situations in which a State party could avail itself of the right of derogation. The Sri Lankan Government should be aware that such derogations could not become a permanent feature of the Constitution.

5. She shared the concerns of other Committee members regarding the retroactive nature of certain laws. The interpretation of terrorism as contained in the Prevention of Terrorism (Temporary Provisions) Act appeared to be much too broad, and the Act contained no provision for recourse to an impartial and independent court.

6. Mrs. HIGGINS said that the proposed seventeenth amendment to the Sri Lankan Constitution contained many useful provisions which would bring the Constitution into greater conformity with the Covenant. She hoped that, when Sri Lanka withdrew its derogation to article 9 (3) of the Covenant, her comments on the subject might prove useful. She encouraged the Government of Sri Lanka to take due account of the Committee's views on the derogations clause of the seventeenth amendment when considering how that clause might be reworded. She remained concerned about the efficacy of habeas corpus, since that right seemed to be unavailable in Sri Lanka.

7. Mr. de Silva's attitude towards preventive detention seemed to be that it was understandable that the State should take individuals into custody in

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order to prevent them from engaging in terrorist acts. Such measures were incompatible with the Covenant. In cases where the State had bona fide concerns about the potential criminal behaviour of certain individuals, it should make use of such court-authorized procedures as surveillance and wire-tapping; it should not, however, take the heavy-handed approach of removing people from circulation for up to 18 months at a time. Finally, the State should endeavour to ensure that offences committed by the armed forces and the police were dealt with speedily.

8. Mr. LALLAH said that it might be useful to make the Covenant better known to law officers and people in the legal profession Sri Lanka. He suggested that Sri Lanka should take great care to formulate its next report in accordance with the Committee's guidelines and that it should indicate specifically what rights had been derogated from and what particular rights it was normally permissible to limit; in addition, it should comment on such derogations and limitations in the light of the provisions of the Covenant.

9. It was essential that Sri Lanka should deal with the prevailing situation of national strife within the framework of the Covenant. The Government should endeavour to achieve a degree of national unity which would lead to the repeal of its emergency provisions. He agreed with other members of the Committee that the proposed seventeenth amendment to the Constitution should be brought into line with the provisions of the Covenant.

10. Mr. PRADO VALLEJO said that the Sri Lankan Government could overcome the problems besetting the country by enacting legislation which was in harmony with the Covenant. He was concerned that the remedy of habeas corpus was, for all intents and purposes, unavailable in Sri Lanka, and he encouraged Sri Lanka to implement its domestic legislation in that area.

11. Sri Lanka appeared to be having difficulty guaranteeing the right to life. Unfortunately, the authorities did not seem to be conducting investigations of deaths and disappearances as expeditiously as they should. Moreover, no effort had been made to provide effective compensation to victims or their families; in that regard, the Sri Lankan Government had the duty to take measures to mitigate the hardship which had been caused by the presence of Indian troops in Sri Lanka.

12. Under section 9 of the Prevention of Terrorism (Temporary Provisions) Act, the Minister was empowered to issue detention orders which could be extended for a period of up to 18 months; that discretionary power was open to abuse. Finally, he observed that freedom of information did not seem to be guaranteed in Sri Lanka, and he referred to reported cases of deaths in the Sri Lankan Broadcasting Corporation.

13. The CHAIRMAN, speaking in his personal capacity, said that, although the second periodic report of Sri Lanka was short and had not been prepared in accordance with the Committee's guidelines, the discussion of the report had

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been fruitful, largely because of the competence of the Sri Lankan delegation. He hoped that, in revising its legislation, Sri Lanka would take account of the observations which had been made by members of the Committee.

14. Mr. de SILVA (Sri Lanka) thanked the Committee for its detailed examination of Sri Lanka's second periodic report and for having given him the opportunity to respond to allegations from various sources. He believed that there had been a slight misunderstanding regarding his statement on preventive detention. Under Sri Lankan law, preventive detention was authorized only in exceptional situations, and he had by no means wished to imply that preventive detention was a permanent feature of everyday life in Sri Lanka.

15. Mr. de Silva (Sri Lanka) withdrew.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Draft general comment on article 10 of the Covenant (continued)
(CCPR/C/41/CRP.1)

16. The CHAIRMAN recalled that, at the 1056th meeting of the Committee, Ms. Chanet had introduced the draft general comment on article 10 of the Covenant (see CCPR/C/SR.1056/Add.1), and he invited the members of the Committee to make observations on the general comment.

17. Mr. EL-SHAFEI said that, in the fourth line of paragraph 3 of the English text, the words "under the same conditions" should be deleted since no conditions should be imposed on respect for the dignity and integrity of detained persons. In its examination of a communication during its current session, the Committee had enlarged its understanding of article 10 of the Covenant by stipulating certain requirements which would ensure respect for detained persons, such as the provision of adequate medical care and basic sanitary facilities to detainees during their period of detention. It might be helpful to States parties if the Committee made some reference to such requirements in its general comment. One or two sentences on the subject could be inserted in paragraph 3 or in a subsequent paragraph.

18. Mr. ANDO said that the general comment should make some mention of the plight of juveniles in custody and of persons detained in mental hospitals, since their human rights were also frequently abused.

19. Mr. SADI said that greater emphasis should be placed on contact with the family, especially if the detained person was the provider, and on the need to protect detainees from medical experimentation.

20. A further point to be highlighted was that in many countries no provision was made for regular inspection of prison conditions by representatives of the civil administration.

21. Mr. LALLAH said that the purpose of the general comments was to codify the Committee's collective views on the experience it had gained from the cases brought to its notice. The comments were taken seriously by the States parties themselves and were carefully scrutinized in the law faculties of universities.

22. He had not had the opportunity to compare the draft text submitted by the Chairman of the Working Group with that of previous general comments on article 10. However, he had the impression that there was a need for more extended comment, particularly with regard to paragraph 3 of the article.

23. Mr. MAVROMMATIS said that paragraph 4 of the general comment should be redrafted in order to make it clear that the provisions of article 10 became operative when a person was arrested or taken into custody, that being the effective moment at which he or she was deprived of liberty.

24. The text should also specify the scope of the term "juvenile offenders" in paragraph 18, and the time-limit for examination of cases involving such offenders, since that was left unclear in paragraph 13 of the draft text.

25. Mrs. HIGGINS said that States parties had not challenged the competence of the Committee to make general comments, which they found useful in preparing their reports. The comments served a further purpose by reminding the Committee of its position on a given issue and by contributing to the emergence of new international norms.

26. In her view, the text of the general comment under consideration should begin with a clearer explanation of the difference between articles 7 and 10 of the Covenant, which was that the former dealt with certain very grave and unacceptable violations of human rights, irrespective of whether the person affected was or was not deprived of liberty, while the latter defined more specific requirements within the context of deprivation of liberty.

27. The reference in paragraph 5 to "persons ... lawfully being held against their will" could be misleading, since it was presumably not true that article 10 would not apply if a person was unlawfully deprived of liberty. As currently worded, paragraph 5 seemed to imply that only persons lawfully deprived of liberty were covered by the provisions of article 10. It might therefore be appropriate to amend the paragraph to refer to all persons deprived of their liberty, including those lawfully held against their will. The proviso in paragraph 9 "While it is conceivable that conditions of detention may vary according to available resources ..." caused her some misgivings, for although it might indeed reflect reality, if might be taken to imply that the applicability of article 10 was dependent on the availability of resources.

28. In paragraph 10 she proposed the insertion after "article 10 (1)" of the words "as well as constituting an obligation by themselves, also constitute the basis for ...". The rest of the paragraph would remain unchanged.

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29. Paragraph 12 stated that failure to comply with the provision in article 10 (2) (b) could not be justified by any consideration whatsoever. She considered that such a strong affirmation was unduly peremptory, and that the paragraph should be reworded accordingly.

30. Mr. WENNERGREN said that it might prove difficult to extend the field of application of article 10 to cover persons "voluntarily" deprived of liberty, such as those who of their own free will committed themselves to a mental hospital: in what circumstances could deprivation of liberty be described as voluntary?

31. He suggested that it would be appropriate to make some mention in the draft general comment - perhaps in paragraph 2 - of the need for protection of persons against medical experimentation, and also, in paragraph 3, against compulsory social rehabilitation programmes and psychotherapy. In the latter paragraph, the words "respect for human dignity" should be followed by "in harmony with what is guaranteed for free persons", since conditions in a closed environment could never be the same as those enjoyed by a free person. He would submit a written amendment to paragraph 3 in due course.

32. In connection with paragraph 11, he pointed out that the presumption of innocence applied when an individual appeared before a court, but was scarcely relevant to remand in custody. The need to segregate accused persons from convicted persons could be expressed without reference to the concept of presumption of innocence. Paragraphs 12 and 18 both dealt with juveniles, and could usefully be combined.

33. In regard to paragraph 14, he said that it was perhaps too optimistic to suggest that the penitentiary system could "ensure" that the offender would wish to live within the law after release, and the paragraph should be reworded to reflect a more modest aspiration. In paragraph 16, mention should also be made of contact with friends, in addition to the family, lawyers and social services.

34. In conclusion, he said that paragraph 17 did not take into account the fact that some prisoners serving life sentences would never be released and could thus not be regarded as open to social rehabilitation.

35. Mr. WENNERGREN, referring to paragraph 17, said that it was necessary to be realistic and to recognize that some prisoners who were serving life sentences in lieu of receiving the death penalty would never be rehabilitated.

36. Mr. HERNDL said that, he had difficulty with paragraphs 4 and 5 of the document, which spoke of persons who were lawfully held against their will; those paragraphs should be reworded to include cases of unlawful detention as well. He suggested that the first clause of the first sentence of paragraph 8 should be amended to read "The Committee notes that there is a need for the applicable provisions to be brought to the attention of the personnel who have

authority over detained persons ..." and that the remainder of the sentence should be adjusted accordingly. In paragraph 11, he suggested replacing the word "must" in line 6 with "should".

37. In addition, he suggested that paragraph 17 should be placed immediately after paragraph 14, and that the last sentence of paragraph 16 should become the last sentence of paragraph 14.

38. With regard to Mr. Wennergren's comment concerning the phrase "to ensure" in paragraph 14, he felt that was what involved was probably an error in the English translation.

39. Mr. MYULLERSON said that the last sentence of paragraph 3 would probably be unacceptable to most States, since certain rights, such as the right to participate in elections, were normally denied to prisoners.

40. He agreed that paragraphs 4 and 5 should apply also to persons who were unlawfully detained. However, the phrase "held against their will" raised complex issues, as persons were frequently interned voluntarily in mental hospitals and could not be said to be deprived of their liberty.

41. He agreed with Mr. Wennergren that paragraphs 12 and 18 dealt with the same subject and should be placed together. The main point was to make it clear that the treatment accorded to juveniles should be different from that accorded to adults.

42. Mr. PRADO VALLEJO said that in the Spanish version of paragraph 6, the words "whether they are complying" should be rendered as "si se cumplen".

43. With regard to the rights of persons in detention, he noted that, in the case of Panama, 80 per cent of its prison population consisted of persons who had already served their sentences. What was happening in Panama was also happening in other countries. The draft general comment on article 10 should state that once a person had completed his sentence, he should be released immediately, and States parties should inform the Committee of what steps they had taken to comply with that provision. Furthermore, information concerning the United Nations Standard Minimum Rules for the Treatment of Prisoners should not be restricted to prison officials, but should also be furnished to prisoners, so that they might become acquainted with their rights. Of equal concern was the situation in Ecuador, where no records were kept to indicate that persons had been incarcerated, so that prisoners' whereabouts were often unknown. States parties had an obligation to ensure that the proper procedures were carried out.

44. The CHAIRMAN said that the Committee had concluded its initial consideration of the draft general comment regarding article 10 of the Covenant.

The public meeting rose at 4.50 p.m.